Attorney-General, *supra*. Or he may appear of his own accord as an intervening party. *Florida* v. *Georgia*, 17 How. (U. S.) 478; *Perkins* v. *Bradley*, 1 Hare, 219. The point seems well settled, but apparently it is not as well known as its utility would merit.

SPECIFIC PERFORMANCE — DEFENSES — LACK OF MUTUALITY OF REMEDY. — The assignee of the vendee of a contract for the sale of land brings a bill against the vendor for specific performance, offering at the same time to carry out all of the vendee's obligations. *Held*, that specific performance be denied for lack of mutuality of obligation and remedy. *Schuyler* v. *Kirk-Brown Realty Co.*, 184 N. Y. Supp. 95.

This case demonstrates the unfortunate results of a literal application of the doctrine of the lack of mutuality of remedy. The rule is well settled in most jurisdictions that the assignee of the vendee may have specific performance against the vendor. *Lenman* v. *Jones*, 222 U. S. 51; *Miller* v. *Whittier*, 32 Me. 203. And, indeed, a like result has been achieved, at times, in New York. *Dodge* v. *Miller*, 81 Hun, 102, 30 N. Y. Supp. 726. In the main, however, the New York courts have applied the "mutuality" formula in its most exaggerated form, to wit: that if the contract cannot be specifically enforced for any reason against one of the parties, then, and for that reason alone, he is not entitled to the remedy of specific performance against his adversary. See *Wadick* v. *Mace*, 191 N. Y. 1, 4, 83 N. E. 571, 572. See 16 COL. L. REV. 443. Such use of the rule has been frequently criticized. 20 HARV. L. REV. 57; 3 COL. L. REV. 1. It is regrettable that a court which recognizes mutuality of performance, as distinguished from mutuality of remedy, as possibly the more desirable conception, should refuse to apply it. In the principal case, mutuality of performance could be secured to the vendor, as had been properly done in the lower court, by a decree conditioned upon performance by the vendee or his assignee. See 33 HARV. L. REV. 955.

STATUTE OF FRAUDS — SUFFICIENT MEMORANDUM — TERMS SET FORTH IN PLEADING SIGNED BY COUNSEL — PRIOR VERBAL CONTRACT WITH ANOTHER PARTY. — The plaintiff sued for specific performance of a written agreement to sell a house to him. The defendant pleaded a prior agreement to sell the house to a third person, and set forth the terms of the agreement in the pleading, which was signed, as usual, by his counsel. There was no other memorandum of this first contract sufficient to satisfy the Statute of Frauds. *Held*, that specific performance be denied. *Grindell* v. *Bass*, [1920] 2 Ch. 487.

Under the Statute of Frauds only the "party to be charged" need sign a "note or memorandum" of the contract. A writing signed by the vendor is sufficient to support a suit by the vendee. *Fowle* v. *Freeman*, 9 Ves. Jr. 351; *Justice* v. *Lang*, 42 N. Y. 493. It is not necessary that the agent who signs the memorandum be authorized to make a note of the agreement; it is sufficient that he had authority to sign the paper in which its terms are set forth. *Cycle Corp.* v. *Humber*, [1899] 2 Q. B. 414. Nor is it necessary that there be an intent to make a binding memorandum. *Daniels* v. *Trefusis*, [1914] 1 Ch. 788; *Beckwith* v. *Clark*, 188 Fed. 171 (C. C. A.). The pleading was therefore a memorandum sufficient to bind the defendant in a suit by the third person. Both purchasers have valid contracts evidenced by sufficient writings. The purpose of denying specific performance must be to protect, not the defendant, but the prior purchaser. If in such a situation either party secured a conveyance, the legal title thus vested would prevail. *Emery* v. *Boston Terminal Co.*, 178 Mass. 172, 59 N. E. 763; *Maguire* v. *Heraty*, 163 Pa. 381, 30 Atl. 151. Here, however, neither has legal title, and it is proper that the prior equity should prevail. And since the writing is only evidential of the contract,